

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

Wisconsin Gas LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No: 2:20-cv-01334-SCD
	)	
American Natural Resources Company	)	
and Honeywell International Inc.,	)	
	)	
Defendants.	)	

**AMERICAN NATURAL RESOURCES COMPANY’S STATEMENT OF PROPOSED  
MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT  
OR, IN THE ALTERNATIVE, FOR JUDGMENT ON PARTIAL FINDINGS**

In accordance with Civ. L.R. 56(b)(1)(C), Defendant American Natural Resources Company (“ANR”), by and through its undersigned attorneys, respectfully submits the following Statement of Proposed Material Facts, as to which there can be no genuine issue and that entitle ANR to judgment as a matter of law:

**A. Regulatory Background and Site History**

1. The Milwaukee Solvay Coke & Gas Superfund Site (the “Site”), located at 311 East Greenfield Avenue in Milwaukee, is an approximately 45-acre parcel of waterfront property just south of downtown Milwaukee, north of and adjacent to the Kinnickinnic River, and west of Lincoln Memorial Harbor at Lake Michigan.<sup>1</sup>

2. The Site is comprised of a number of adjacent lots where a variety of industrial activities—including coke and gas production, iron manufacturing, hide tanning, and other operations—have occurred since at least 1900.<sup>2</sup>

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<sup>1</sup> Amended Compl. [Doc. 25] ¶¶ 1, 9.

<sup>2</sup> *Id.* ¶ 10; WEC Energy Group, *Historical Industrial Site Getting 21st Century Makeover, Paving Way for Future Job Growth*, WE ENERGIES NEWS, Oct. 13, 2017, <http://weenergies.blogspot.com/2017/10/historical->

3. A coke and manufactured gas plant occupied the northern portion of the Site from the early 1900s until 1983.<sup>3</sup>

4. Directly south of the coke and gas plant, The Milwaukee Electric Railway & Light Company, now known as Wisconsin Electric Power Company, owned a portion of the Site, where it operated electric railroad facilities to support streetcar operations for the area.<sup>4</sup>

5. The Milwaukee Electric Railway & Light Company converted its property at the Site for use as a coal storage yard in 1917 and ultimately sold the property to a third party in or around 1936.<sup>5</sup>

6. Wisconsin Electric Power Company, the successor to The Milwaukee Electric Railway & Light Company, is an affiliate of Plaintiff Wisconsin Gas, LLC (“Wisconsin Gas”). Jointly owned by WEC Energy Group, Wisconsin Gas and Wisconsin Electric Power Company do business together as “We Energies.”<sup>6</sup>

7. From the time coke and gas manufacturing operations in the northern portion of the Site were discontinued in 1983 until approximately 2003, Wisconsin Wrecking Company (“Wisconsin Wrecking”) used that part of the Site as a scrap metal salvage operation under a

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[industrial-site-getting-21st.html](#).

<sup>3</sup> Amended Compl. [Doc. 25] ¶¶ 10-11, 14.

<sup>4</sup> Ex. A-1, Letter from Rachel Schneider of Quarles & Brady, LLP to Craig Melodia of U.S. EPA, Oct. 29, 2004, and Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, produced by Wisconsin Gas at WG-ANR-00010740-41 (cover letter) and WG-ANR-00046079-93 (narrative response, without attachments or enclosures); U.S. EPA, *Solvay Coke and Gas Co., Milwaukee, WI, Site Documents and Data*, Milwaukee Solvay Coke & Gas, Remedial Investigation Report (“RI Report”) App. B—Historical Site Documentation, prepared for the Milwaukee Solvay Coke & Gas Site RI/FS Group, including Wisconsin Gas, by Arcadis U.S., Inc., Dec. 2015, at p. 4-1, *publically available at* <https://semspub.epa.gov/src/document/05/929359>.

<sup>5</sup> Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, Oct. 29, 2004, at WG-ANR-00046079; RI Report App. B—Historical Site Documentation, prepared for the Milwaukee Solvay Coke & Gas Site RI/FS Group, including Wisconsin Gas, by Arcadis U.S., Inc., Dec. 2015, at p. 4-1, <https://semspub.epa.gov/src/document/05/929359>.

<sup>6</sup> Ex. B, Wisconsin Gas’s Verified Response to Interrogatory No. 6 of ANR’s First Set of Interrogatories, Mar. 19, 2021, at 6; *see also* Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, at WG-ANR-00046079.

land contract with the property's owner, Cliffs Mining Company ("Cliffs Mining").<sup>7</sup>

8. In January 2003, Cliffs Mining conveyed the Site by quitclaim deed to a limited liability company called Water Street Holdings, LLC ("Water Street"), which in turn quit claimed the property to another limited liability entity named Golden Marina Causeway, LLC ("Golden Marina").<sup>8</sup>

9. The United States Environmental Protection Agency ("U.S. EPA") performed initial investigative work at the Site in 2001 and 2002 and identified various contaminants based on historic operations.<sup>9</sup>

10. On February 14, 2003, U.S. EPA issued an Administrative Order by Consent (No. V-W-03-C-733) (the "2003 Removal Order") requiring Cliffs Mining, Water Street, and Wisconsin Wrecking to perform a removal action under CERCLA to secure the Site with fencing and address primary sources of surface contamination.<sup>10</sup>

11. After work under the 2003 Removal Order was completed, U.S. EPA sent a CERCLA Special Notice Letter on March 30, 2006, to an expanded group of companies it then considered potentially responsible parties ("PRPs") for further work at the Site. In addition to Cliffs Mining, the Special Notice recipients included both Wisconsin Gas and its affiliate Wisconsin Electric Power Company, as well as ANR, Maxus Energy Corporation, and others.<sup>11</sup>

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<sup>7</sup> Amended Compl. [Doc. 25] ¶ 11; Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, U.S. EPA Region 5, Docket No. V-W-07-C-861, Jan. 31, 2007 ("RI/FS ASAO"), at 5 ¶ 13, *publically available at* <https://semspub.epa.gov/work/05/269627.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 6 ¶ 14; Administrative Settlement Agreement and Order on Consent for Site Fencing/Security, Engineering Evaluation/Cost Analysis and Non-Time Critical Removal Action at the Uplands, EPA Region 5, Docket No. V-W-17-C-010, effective Aug. 31, 2017 ("2017 ASAO"), at 5 ¶ 11, *publically available at* <https://semspub.epa.gov/src/document/05/936166>.

<sup>10</sup> RI/FS ASAO at 5-6 ¶ 13, <https://semspub.epa.gov/work/05/269627.pdf>; 2017 ASAO at 5 ¶ 12, <https://semspub.epa.gov/src/document/05/936166>.

<sup>11</sup> Ex. C-1, U.S. EPA Special Notice Letter, Mar. 30, 2006, ANRC-00002416 (Enclosure 2, "List of Parties Sent Special Notice Letter"); *see also Cliffs Mining Co. v. Wis. Elec. Power Co.*, No. 18-CV-581, 2018 WL

12. U.S. EPA's 2006 Special Notice invited the recipients to form a group to engage in negotiations for performance of a Remedial Investigation and Feasibility Study ("RI/FS") to facilitate U.S. EPA's selection of a final remedial action under CERCLA. The letter cautioned that U.S. EPA might otherwise pursue litigation or take unilateral administrative action against some or all of them.<sup>12</sup>

13. U.S. EPA's 2006 Special Notice did not request that any of the recipients commit to performing or funding the remedial design or construction of the final remedy itself; rather, U.S. EPA requested only a commitment to perform RI/FS work and reimburse the agency's past costs.<sup>13</sup>

14. On or about January 31, 2007, Wisconsin Gas, Wisconsin Electric Power Company, ANR, Cliffs Mining, and other recipients of U.S. EPA's 2006 Special Notice entered into an Administrative Settlement Agreement and Order on Consent with the U.S. EPA (the "RI/FS ASAOC"), agreeing to complete the requested RI/FS work at the Site in exchange for a covenant not to sue from the agency and statutory protection from contribution claims based matters addressed in the order.<sup>14</sup>

15. As expressly agreed in paragraph 4 of the RI/FS ASAOC:

EPA and Respondents recognize that ... the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations in ... this Settlement Agreement."<sup>15</sup>

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6181470 (E.D. Wis. Nov. 27, 2018).

<sup>12</sup> Ex. C-1, U.S. EPA Special Notice Letter, Mar. 30, 2006, at 2, 5 (ANRC-00002409, 12).

<sup>13</sup> *Id.* at 1-4 (ANRC00002408-11).

<sup>14</sup> Amended Compl. [Doc. 25] ¶ 36; RI/FS ASAOC, at 27 ¶ 78 (Covenant Not to Sue) & 30-31 ¶ 92 (Contribution), <https://semspub.epa.gov/work/05/269627.pdf>.

<sup>15</sup> *Id.* at 1 ¶ 4.

16. In 2017, after the Remedial Investigation was performed but before a Feasibility Study was completed, Wisconsin Gas purchased the Site on an “as is, where is” basis out of the bankruptcy estate of Golden Marina for ultimate development and resale to Komatsu Mining Corporation.<sup>16</sup>

17. Wisconsin Gas also entered into a separate Administrative Settlement Agreement and Order on Consent with U.S. EPA in 2017 (the “2017 ASAOC”) for performance of a “non-time-critical removal action” at the Site.<sup>17</sup>

18. On March 29, 2018, the U.S. EPA directed that “for the upland portions of the Site subject to the [RI/FS ASAOC], EPA will hold in abeyance work under the [RI/FS ASAOC] while We Energies performs the work under the 2017 [ASAOC].”<sup>18</sup>

19. On August 28, 2020, Wisconsin Gas filed this lawsuit, seeking to require ANR to pay a portion of the costs Wisconsin Gas claims to have incurred performing its “non-time-critical removal action” under the 2017 ASAOC.<sup>19</sup>

## **B. Prior Relationship and Histories of ANR and Wisconsin Gas**

20. ANR is the successor-in-interest to a holding company incorporated in New Jersey in 1901 as American Light & Traction Company (“ALT”).<sup>20</sup>

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<sup>16</sup> Amended Compl. [Doc. 25] ¶ 65; Scheduling Conf. Transcript [Doc. 17], Oct. 26, 2020, at 4:6-12 & 4:18-23 (acknowledgment that Wisconsin Gas “purchased this property in 2017 knowing full well ... that this is a cleanup site,” that Wisconsin Gas bears responsibility for the cleanup, and that the “ultimate goal” was for the Site to “be the headquarters of Komatsu”); 2017 ASAOC at 5 ¶ 13 (stating that the Remedial Investigation was complete), <https://semspub.epa.gov/src/document/05/936166>; Ex. A-2, *In Re Golden Marina Causeway, LLC*, Order Authorizing Sale, Bankr. No. 16-03587 (Bankr. N.D. Ill. filed Apr. 4, 2017), produced by Wisconsin Gas at WG-ANR-00073558-63; Ex. A-3, *In Re Golden Marina Causeway LLC*, Order Approving Sale Procedures, Etc., Bankr. No. 16-03587, Schedule 1 at 5 (p. 14 of 27) (Bankr. N.D. Ill. filed Jan. 23, 2017) (“As Is, Where Is”).

<sup>17</sup> 2017 ASAOC, <https://semspub.epa.gov/src/document/05/936166>; Amended Compl. [Doc. 25] ¶ 66.

<sup>18</sup> Ex. A-4, Letter from Viral Patel, EPA Remedial Project Manager, to Jack Kratzmeyer, RI/FS Group Project Coordinator, Mar. 29, 2018, produced by Wisconsin Gas at WG-ANR-00108873.

<sup>19</sup> Compl. [Doc. 1]. Wisconsin Gas added Honeywell International, Inc. (“Honeywell”) as a defendant in 2021. Amended Compl. [Doc. 25]. Wisconsin Gas’s claims against Honeywell are not material to ANR’s motion.

<sup>20</sup> Amended Compl. [Doc. 25] ¶ 27 (referring to ALT as a predecessor of ANR); JOHN MOODY, MOODY’S

21. With offices in New York City and Chicago, ALT was formed to consolidate the stock ownership of several public utility companies in different states, including Milwaukee Gas Light Company in Wisconsin.<sup>21</sup>

22. Milwaukee Gas Light, a predecessor of Plaintiff Wisconsin Gas, held an exclusive and perpetual franchise from the Wisconsin Public Service Commission to provide gas service in the City of Milwaukee.<sup>22</sup>

23. ALT itself was solely “a holding corporation,” or parent company, of its operating subsidiaries.<sup>23</sup>

24. The United States Securities and Exchange Commission (“SEC”) concluded in 1946 that ALT “performs no substantial functions for its operating utility subsidiaries.”<sup>24</sup>

25. In 1949, ALT changed its name to American Natural Gas Company.<sup>25</sup>

26. Milwaukee Gas Light Company, then still a subsidiary of American Natural Gas, changed its name to Wisconsin Gas Company in 1965 and later became Wisconsin Gas, LLC in

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MANUAL OF INVESTMENTS, *American Light & Traction Co.* 257 (1922), available at <https://babel.hathitrust.org/cgi/pt?id=uc1.c2583274&view=1up&seq=415&skin=2021>.

<sup>21</sup> *Id.*; Ex. A-5, Henry John O’Leary, *Financial History of the Milwaukee Gas Light Company*, at 9 (WG-ANR-48122) (U. Wis. B.A. Thesis 1930); Ex. A-6, Carl Claussen, *The Story of American Natural Gas Company*, Speech Given to the Citigas Executives Luncheon Club, Nov. 17, 1964, at 1 (WG-ANR-00007183).

<sup>22</sup> Ex. A-1, Letter from Rachel Schneider of Quarles & Brady, LLP to Craig Melodia of U.S. EPA, Oct. 29, 2004, and Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, produced by Wisconsin Gas at WG-ANR-00010740-41 (cover letter) and WG-ANR-00046079-93 (acknowledging that Wisconsin Gas is the successor to Milwaukee Gas Light); THE MANUAL OF STATISTICS, *Western Gas Co.*, Vol. 25 at 789 (1903), available at [https://www.google.com/books/edition/\\_/wS45AAAAMAAJ?hl=en&gbpv=1](https://www.google.com/books/edition/_/wS45AAAAMAAJ?hl=en&gbpv=1).

<sup>23</sup> *Financial News*, AM. REV. OF REVS., Vol. LII, No. 2, at 256 (Aug. 1915), available at <https://babel.hathitrust.org/cgi/pt?id=hvd.hn46bc&view=1up&seq=270&skin=2021>; *United Light & Power Co.*, 22 S.E.C. 704, 1946 WL 24903, at \*2 (Apr. 31, 1946) (describing ALT as “solely [a] holding compan[y]”).

<sup>24</sup> *United Light & Power Co.*, 22 S.E.C. 704, 1946 WL 246903, at \*6 (Apr. 30, 1946); see also Ex. A-5, Henry John O’Leary, *Financial History of the Milwaukee Gas Light Company*, at 12 (WG-ANR-48125) (U. Wis. B.A. Thesis 1930) (noting that ALT “provides very few services for its subsidiaries”).

<sup>25</sup> Ex. C-2, ALT Minutes of Stockholders’ Meeting, Vol. 18, June 15, 1949, at 116 (ANRC-00000839); see also Amended Compl. [Doc. 25] ¶ 30.

2004.<sup>26</sup>

27. As its counsel advised U.S. EPA in 2005, Wisconsin Gas “has had no corporate relationship with American Natural Gas since June 30, 1975,” when American Natural Gas divested all its stock holdings in Wisconsin Gas Company.<sup>27</sup>

28. Shortly after that divestiture, American Natural Gas changed its own name to American Natural Resources Company in 1976.<sup>28</sup>

### **C. History and Operations of Milwaukee Coke & Gas Company**

29. Wisconsin Gas now claims that its former parent is liable to it under CERCLA based on operations of another former ALT subsidiary, Milwaukee Coke & Gas Company.<sup>29</sup>

30. Milwaukee Coke & Gas was incorporated in Wisconsin on January 12, 1903, and dissolved under Wisconsin law almost 60 years ago.<sup>30</sup>

31. As reflected in the Articles of Association for Milwaukee Coke & Gas, the stated purpose of the company included the manufacture of coke and by-products; the reduction of by-products in that process; and the mining, manufacture, and transportation of iron and coal.<sup>31</sup>

32. Milwaukee Coke & Gas owned and operated, at least in part, the coke and gas plant on the northern portion of the Site prior to selling all or substantially all of its business and assets, including the plant and equipment, to a third party in 1962.<sup>32</sup>

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<sup>26</sup> Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to EPA Information Request, Oct. 29, 2004, at WG-ANR-00046080.

<sup>27</sup> Ex. A-7, Letter from Rachel A. Schneider of Quarles & Brady to Craig Melodia of U.S. EPA, Mar. 23, 2005, produced by Wisconsin Gas with bates numbers WG-ANR-00000665-70.

<sup>28</sup> Amended Compl. [Doc. 25] ¶ 35.

<sup>29</sup> See Amended Compl. [Doc. 25] ¶¶ 24-35 & 56-64.

<sup>30</sup> Ex. C-3, Articles of Association and filing receipt by Wisconsin Secretary of State, filed Jan. 12, 1903 (ANRC-00000056-59); see also paragraphs 104 and 109-12, *infra*.

<sup>31</sup> Ex. C-3, Articles of Association and filing receipt by Wisconsin Secretary of State, filed Jan. 12, 1903 (ANRC-00000056).

<sup>32</sup> Amended Compl. [Doc. 25] ¶ 26; see also *id.* ¶ 33 and paragraphs 101-02, *infra*.



33. In 1928, ALT purchased all the outstanding stock of Milwaukee Coke & Gas from the Koppers Gas & Coke Company.<sup>33</sup>

34. Both before and after ALT's 1928 purchase of Milwaukee Coke & Gas Company's stock, Milwaukee Coke & Gas sold surplus gas generated as a by-product of its coking process to Wisconsin Gas's predecessor, Milwaukee Gas Light Company.<sup>34</sup>

35. Milwaukee Coke & Gas Company's primary business (and the source of the majority of its operating revenue) was selling the coke, chemicals, and coke by-products produced through the coking process to customers other than Milwaukee Gas Light.<sup>35</sup>

36. Milwaukee Gas Light and Milwaukee Coke & Gas continued to deal with each other by contract as separate legal entities after ANR's acquisition of Milwaukee Coke & Gas Company's stock.<sup>36</sup>

37. An August 1934 agreement, for example, obligated Milwaukee Coke & Gas to supply no less than 13,000,000 cubic feet of gas per day for a five-year term and gave Milwaukee Gas Light the option to purchase the rest. Among other things, the contract also required that the gas be washed and scrubbed and placed limits on naphthalene and sulfur content.<sup>37</sup>

38. After the stock acquisition in 1928, there never was a time when ALT directors or

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<sup>33</sup> Amended Compl. [Doc. 25] ¶ 27; Ex. C-4, U.S. Rev. Auditor's Report, Milwaukee Coke & Gas Co., Year 1927, Mar. 27, 1929, at ANRC-00010206 ("Under date of July 6, 1928, [ALT] purchased the capital stock of the Milwaukee Coke and Gas Co. from The Koppers Gas and Coke Co.").

<sup>34</sup> Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, Oct. 29, 2004, at WG-ANR-00046079; *see also* Ex. A-8, Milwaukee Coke & Gas Company Gas Delivered to Milwaukee Gas Light Company, 1917 to 1931, at WG-ANR-00004610.

<sup>35</sup> Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, Oct. 29, 2004, at WG-ANR-00046079.

<sup>36</sup> *E.g.*, Ex. A-9, Contract for the Sale and Purchase of Crude Coke Oven Gas, Aug. 21, 1934, produced by Wisconsin Gas with bates numbers WG-ANR-00078628-32; *see also* paragraph 46, *infra*.

<sup>37</sup> Ex. A-9, Contract for the Sale and Purchase of Crude Coke Oven Gas, Aug. 21, 1934.



officers held a majority of seats on the board of Milwaukee Coke & Gas or any more than three (and sometimes fewer) of the eight executive officer positions of Milwaukee Coke & Gas.<sup>38</sup>

39. Both the local Vice President in Charge of Operations and Vice President in Charge of Sales for Milwaukee Coke & Gas continued to serve in those capacities for many years after ALT acquired the company's stock.<sup>39</sup>

40. George W. Mackie of Milwaukee had been the Vice President in Charge of Operations at the Milwaukee Coke & Gas plant since at least 1925 and remained the designated Vice President in Charge of Operations for the company until at least 1942.<sup>40</sup>

41. Walter C. Liebner, another local Milwaukeean, had been an executive officer of Milwaukee Coke & Gas Company since 1922, and continued to serve as Vice President in Charge of Sales for the company until 1945.<sup>41</sup>

42. In addition to serving as executive officers of the company, Mr. Mackie and Mr. Liebner were members of the Board of Directors of Milwaukee Coke & Gas Company, both before and after ALT acquired the stock of that company. Mr. Mackie and Mr. Liebner were not, however, ever directors nor officers of either ALT or Milwaukee Gas Light.<sup>42</sup>

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<sup>38</sup> Compare Ex. C-5, Milwaukee Coke & Gas Company/Milwaukee Solvay Coke Company Annual Reports of Officers and Directors from 1922 to 1962 with Ex. C-6, Excerpts of American Light & Traction/American Natural Gas Annual Reports from 1928 to 1962 (lists of officers and directors).

<sup>39</sup> See paragraphs 40-41, *infra*.

<sup>40</sup> Ex. C-5, Milwaukee Coke & Gas Company/Milwaukee Solvay Coke Company Annual Reports of Officers and Directors from 1922 to 1962 (G.W. Mackie listed as Vice President in Charge of Operations in reports from Jan. 14, 1925 to Jan. 1, 1942).

<sup>41</sup> *Id.* (W.C. Liebner of Milwaukee shown as officer of company in reports to the Secretary of State from Aug. 14, 1922 to Jan. 1, 1945).

<sup>42</sup> See Ex. C-5, Milwaukee Coke & Gas Company/Milwaukee Solvay Coke Company Annual Reports of Officers and Directors from 1922 to 1962 (showing G.W. Mackie as a director from 1925 to 1939 and 1942, and W.C. Liebner as a director from 1922 to 1939 and 1942 to 1945); Ex. C-6, Excerpts of American Light & Traction/American Natural Gas Annual Reports from 1928 to 1962 (lists of officers and directors); Ex. A-10, Wisconsin Gas Co., *Milwaukee Gas Light Company 1852-1965 Wisconsin Gas Company 1966- Presidents and Directors*, produced by Wisconsin Gas at WG-ANR-00047929-36; Ex. A-11, Excerpts from Milwaukee Gas Light Board of Directors Minutes (showing officers elected from 1928 to 1941); Ex. A-12, Excerpts of Milwaukee Gas Light Annual Reports from 1939 to 1962 (lists of officers and directors).

43. On or about March 7, 1942, the Milwaukee Coke & Gas Company filed a Certificate of Amendment to its Articles of Incorporation, changing the company's name to Milwaukee Solvay Coke Company.<sup>43</sup>

44. James A.B. Lovett and Paul J. Kortsch, the President and Secretary, respectively, of the Milwaukee Coke & Gas, signed the notarized certification of the name-change resolution.<sup>44</sup>

45. Neither Mr. Lovett nor Mr. Kortsch ever served as an officer or director of ALT.<sup>45</sup>

46. Despite the elimination of the word "Gas" in the company's name, Milwaukee Solvay Coke Company entered into a new agreement on January 29, 1943, to supply manufactured gas from the coke plant to Milwaukee Gas Light, and the parties amended the contract a few months later.<sup>46</sup>

#### **D. Public Utility Holding Company Regulation**

47. As a public utility holding company, ALT came under new federal requirements when Congress passed the Public Utility Holding Company Act of 1935. The Act required, among other things, that any holding company's utility system be limited to subsidiaries operating in a single state or that the operations be part of an "integrated system" serving a limited geographic area.<sup>47</sup>

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<sup>43</sup> Ex. A-13, Certificate of Amendment to Articles of Incorporation of Milwaukee Coke & Gas, Feb. 28, 1942, WG-ANR-00013321-24.

<sup>44</sup> *Id.* at WG-ANR-0013323.

<sup>45</sup> Ex. C-6, Excerpts of American Light & Traction/American Natural Gas Annual Reports from 1928 to 1962 (lists of officers and directors do not include Messrs. Lovett or Kortsch in any year); *see also* Ex. A-12, Excerpts of Milwaukee Gas Light Annual Reports from 1939 to 1962 (Mr. Lovett not shown as an officer or director of Milwaukee Gas Light before 1946 or after 1948; no listing for Mr. Kortsch as officer or director of Milwaukee Gas Light in any year).

<sup>46</sup> *See* Ex. A-14, Coke Oven Gas Contract, Aug. 22, 1950, at 3 (WG-ANR-00054350; mentioning Jan. 29, 1943 contract and Apr. 5, 1943 amendment).

<sup>47</sup> Public Utility Holding Company Act of 1935, ch. 687, Title I, 49 Stat. 803 (1935) (codified at 15 U.S.C.

48. Although ALT was the direct parent of both Milwaukee Solvay Coke Company and Milwaukee Gas Light Company, ALT itself was merely an intermediate holding company in a larger public utility holding company system.<sup>48</sup>

49. United Light and Railways Company (“ULR”), one of the largest public utility holding companies at the time, held approximately 51 percent of ALT’s voting stock. ULR, in turn, was wholly owned by United Light & Power Company, which stood “at the apex of the system.”<sup>49</sup>

50. In a Public Utility Holding Company Act decision dated March 20, 1941, the SEC required the liquidation and distribution of United Light & Power Company, leaving ULR at the top of the holding company system.<sup>50</sup>

51. In a second opinion dated August 5, 1941, the SEC directed ULR to divest its entire interest in ALT, ultimately making ALT a publically held company.<sup>51</sup>

52. The SEC’s August 5, 1941 opinion also required ALT to divest its interest in three Texas subsidiaries and eliminate other common-stock holdings to comply with the provisions of the Public Utilities Holding Companies Act. The SEC’s order did not require ALT to divest other holdings in Michigan or Wisconsin, including ALT’s interest as majority shareholder of Milwaukee Gas Light or as sole shareholder of Milwaukee Coke & Gas.<sup>52</sup>

53. ALT’s management initially believed, however, that dissolution and liquidation of

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§§ 79 – 79z-6 and repealed by Pub. L. 109–58, Title XII, § 1263, 119 Stat. 974 (2005)).

<sup>48</sup> See, e.g., *Allied Chem. Corp. v. United States*, 305 F.2d 433, 435 (Ct. Cl. 1962) (describing ownership structure of ALT).

<sup>49</sup> *Id.*

<sup>50</sup> *In re United Light & Power Co.*, 8 S.E.C. 837, 1941 SEC LEXIS 1788 (Mar. 20, 1941).

<sup>51</sup> *In re United Light & Power Co.*, 9 S.E.C. 833, 1941 SEC LEXIS 1034 (Aug. 5, 1941).

<sup>52</sup> *Id.* at 845, 1941 SEC LEXIS 1034 at \*20-21; see also Ex. C-6, Excerpts from /American Natural Gas Annual Reports from 1928 to 1962 (1941 Annual Report at 3, ANRC-00000421).

ALT was the only practical means of achieving full compliance with the Public Utility Holding Company Act and SEC's directives.<sup>53</sup>

**E. Sale of Milwaukee Solvay to Milwaukee Gas Light**

54. In 1945, ALT, Milwaukee Gas Light Company, and Milwaukee Solvay Coke Company sought approval from the SEC to allow Milwaukee Gas Light to acquire Milwaukee Solvay Coke's stock as a preliminary transaction to facilitate ALT's own plan of dissolution and liquidation.<sup>54</sup>

55. Around the same time, Milwaukee Gas Light Company filed a petition with the Wisconsin Public Service Commission, seeking approval to purchase Milwaukee Solvay Coke Company as a standby source of gas.<sup>55</sup>

56. Milwaukee Gas Light's legal counsel advised the Wisconsin Public Service Commission that, in light of the planned dissolution of ALT, "the gas light company has 'a wonderful opportunity' to buy the coke firm for \$4,500,000. He said the holding firm had paid \$7,800,000 to get the coke company in 1928."<sup>56</sup>

57. In support of the proposed purchase, Milwaukee Gas Light indicated that it contemplated "the operation of the said Coke plant as a self-supporting unit."<sup>57</sup>

58. On January 3, 1947, with approval from both the SEC and the Wisconsin Public

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<sup>53</sup> *Id.*; Ex. A-6, Carl Claussen, *The Story of American Natural Gas Company*, Speech Given to the Citigas Executives Luncheon Club, Nov. 17, 1964, at 8, WG-ANR-00007190.

<sup>54</sup> Ex. C-7, ALT, Minutes of Special Meeting of Board of Directors, Oct. 10, 1945; Ex. C-8, *In re United Light & Power Co.*, S.E.C. File Nos. 59-11, 59-17, & 54-25, Application No. 21A, filed Nov. 11, 1954, at 3.

<sup>55</sup> E.F. Burdick, *Your Job and Natural Gas*, MILWAUKEE SOLVAY NEWS, Apr. 1946, at WG-ANR-00004747 (included in Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas).

<sup>56</sup> Ex. A-16, *Gas Co. Again Pleads to Buy Solvay Plant*, MILWAUKEE J., Jan. 3, 1946, at 37, col. 2 (ANRC-00010919).

<sup>57</sup> See E.F. Burdick, *supra*, note 55.

Service Commission, Milwaukee Gas Light acquired all the outstanding common stock of Milwaukee Solvay Coke from ALT in exchange for 362,828 shares of newly issued common stock of Milwaukee Gas Light having an aggregate par value of \$4,353,936.<sup>58</sup>

59. The 1947 stock transaction made Milwaukee Solvay Coke Company a direct, wholly-owned subsidiary of Milwaukee Gas Light and thus a second-tier subsidiary of ALT.<sup>59</sup>

#### **F. Resurrection of ALT as American Natural Gas Company**

60. Ultimately, ALT withdrew its plan to dissolve after another of its subsidiaries received approval from the Federal Power Commission to install a natural gas transmission pipeline between Detroit and Milwaukee.<sup>60</sup>

61. The SEC agreed that the natural gas pipeline would make ALT's utility holdings in Wisconsin and Michigan an "integrated system" in a single area or region, within the meaning of the Public Utility Holding Company Act, and that Milwaukee Solvay could remain within the system as an "economically necessary and appropriate" non-utility business.<sup>61</sup>

62. No longer facing dissolution, ALT changed its name to American Natural Gas Company on or about June 15, 1949.<sup>62</sup>

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<sup>58</sup> See, e.g., Ex. C-6, Excerpts from /American Natural Gas Annual Reports from 1928 to 1962 (1946 Annual Report at 7, ANRC-00000622); Ex. C-9, American Natural Gas Board of Directors Minutes, Oct. 27, 1954, at ANRC-00005276; *In re United Light & Power Co.*, Public Utility Holding Company Act Release No. 7023, Order Granting Application and Permitting Declaration to Become Effective, 1946 SEC LEXIS 688 (Dec. 2, 1946); see also *Panhandle E. Pipe Line Co. v. SEC*, 170 F.2d 453, 463 (8th Cir. 1948) (affirming the SEC's approval of the plan); Ex. A-17, Milwaukee Gas Light Board of Directors Minutes, Jan. 18, 1955, at 218 (attached Order of Wisconsin Public Service Comm'n, at WG-ANR-00009879).

<sup>59</sup> See, e.g., Ex. C-6, Excerpts from /American Natural Gas Annual Reports from 1928 to 1962 (1946 Annual Report at 7, ANRC-00000622).

<sup>60</sup> See, e.g., Ex. A-6, Carl Claussen, *The Story of American Natural Gas Company*, Speech Given to the Citigas Executives Luncheon Club, Nov. 17, 1964, at 8, WG-ANR-00007190.

<sup>61</sup> *In re United Light & Rys. Co.*, 27 S.E.C. 441, 473, 1947 SEC LEXIS 485, at \*62-63 (Dec. 30, 1947); see also *Panhandle E. Pipe Line Co. v. SEC*, 170 F.2d 453, 463 n.9 (8th Cir. 1948).

<sup>62</sup> Ex. C-2, American Light & Traction, Minutes of Stockholders' Meeting, June 15, 1949, at 116 (ANRC-00000839).

63. Later that same year, American Natural Gas Company incorporated a new subsidiary in Michigan called the American Natural Gas Service Company to offer the holding company's operating subsidiaries certain services at cost, including assistance with purchasing, taxes, accounting, engineering, and insurance procurement.<sup>63</sup>

64. By agreement, the services of the American Natural Gas Service Company were provided only if and when requested by operating subsidiaries within the American Natural Gas system.<sup>64</sup>

#### **G. Milwaukee Solvay Coke Company's Continued Operations**

65. Milwaukee Solvay Coke Company independently employed hundreds of local Milwaukee employees of its own, including chemists, engineers, mechanics, machinists, pipefitters, ironworkers, and blacksmiths at the Site.<sup>65</sup>

66. Milwaukee Solvay Coke Company maintained separate purchasing, engineering, and mechanical departments as well as its own laboratory at the Site.<sup>66</sup>

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<sup>63</sup> *In re Am. Natural Gas Serv. Co.*, 30 S.E.C. 807, 1950 WL 40347, at \*2 (Jan. 24, 1950).

<sup>64</sup> *Id.*; Ex. A-18, Letter from Milwaukee Gas Light to Wis. Pub. Serv. Comm'n, Nov. 3, 1949, at 2 (WG-ANR-00006010); Ex. A-19, Letter from Milwaukee Gas Light to Wis. Pub. Serv. Comm'n, Dec. 1, 1949, at 4 (WG-ANR-00006046); Ex. A-20, Wis. Pub. Serv. Comm'n, Order Approving Contract, No. 2-U-3206, Dec. 20, 1949, WG-ANR-00099735-37. *Cf. In re App. of Milwaukee Gas Light Co.*, No. 2-U-1438, 21 Wis. Pub. Serv. Comm'n Rep. 637, 640 (Oct. 25, 1939) (discussing prior agreement with United Light & Power Service Co.), available at [https://www.google.com/books/edition/Opinions\\_and\\_Decisions\\_of\\_the\\_Public\\_Ser/cR9SAAAAMAAJ?hl=en&gbpv=637](https://www.google.com/books/edition/Opinions_and_Decisions_of_the_Public_Ser/cR9SAAAAMAAJ?hl=en&gbpv=637).

<sup>65</sup> Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas (*Your Job*, MILWAUKEE SOLVAY NEWS, Aug. 1946, at WG-ANR-00004760-61; *Around the Plant*, MILWAUKEE SOLVAY NEWS, Nov. 1946, at WG-ANR-00004768-69; *Around the Plant*, MILWAUKEE SOLVAY NEWS, Jan. 1947, at WG-ANR-00004775; *Do You Know*, MILWAUKEE SOLVAY NEWS, Jan. 1947, at WG-ANR-00004773; *Chemical Workers Nominate New Officers*, MILWAUKEE SOLVAY NEWS, Nov. 1947, at WG-ANR-00004787; *Harold Gerlach, Pictures and Story Tell "What Makes the Wheels Go 'Round" at Solvay Coke Plant*, MILWAUKEE SOLVAY NEWS, July 1948, at WG-ANR-00004807-09; *Machinists Guard Against Plant Breakdowns*, MILWAUKEE SOLVAY NEWS, Mar. 1949, at 4, WG-ANR-00031265; *Engineers Seek New Methods To Lower Costs Without Loss of Efficiency in Operations*, MILWAUKEE SOLVAY NEWS, Oct. 1949, at 4, WG-ANR-00004838; *New Officers—Quarter Century Club*, MILWAUKEE SOLVAY NEWS, May-June 1955, at WG-ANR-00004886).

<sup>66</sup> Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas (*Around the Plant*, MILWAUKEE SOLVAY NEWS, Nov. 1946, at WG-ANR-00004768-79; *Other Plans for New Equipment*, MILWAUKEE SOLVAY NEWS, Apr. 1947, at 2, WG-ANR-00016440; *Engineers Seek New Methods To Lower Costs Without Loss of Efficiency in Operations*, MILWAUKEE SOLVAY NEWS, Oct. 1949, at 4,

67. In addition, Milwaukee Solvay Coke Company had its own safety policies, safety courses, fire brigade, and safety inspector.<sup>67</sup>

68. Among other things, Milwaukee Solvay Coke Company had its own employee insurance plan, pension plan, and labor union contracts.<sup>68</sup>

69. Milwaukee Solvay Coke Company also had a separate employee news publication and social clubs for its employees.<sup>69</sup>

70. Financial data for Milwaukee Solvay Coke Company were separately maintained in balance sheets and other accounting records, reflecting Milwaukee Solvay Coke's operating revenues, operating expenses, and retained earnings.<sup>70</sup>

71. Milwaukee Solvay Coke Company continued to have its own by-laws as well as company rules and policies.<sup>71</sup>

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WG-ANR-00004838; *New Officers—Quarter Century Club*, MILWAUKEE SOLVAY NEWS, May-June 1955, at WG-ANR-000048860; Ex. A-21, *History of the Milwaukee Solvay Coke Company*, at 10, WG-ANR-00046310.

<sup>67</sup> Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas (*Your Job*, MILWAUKEE SOLVAY NEWS, Aug. 1946, at WG-ANR-00004761; Emil Rahn, Safety Inspector, *Company Holds Fire Demonstration*, MILWAUKEE SOLVAY NEWS, Nov. 1947, at 3, WG-ANR-00004787; *Twenty Five Sign For Safety Classes*, MILWAUKEE SOLVAY NEWS, Mar. 1949, at 3, WG-ANR-00004822; *Employees' Training Course Is Announced*, MILWAUKEE SOLVAY NEWS, Oct. 1949, at 2, WG-ANR-00004836).

<sup>68</sup> Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas (*Your Job*, MILWAUKEE SOLVAY NEWS, Aug. 1946, at WG-ANR-00004760; *Sickness Benefit Increase Approved by Employees of Plant*, MILWAUKEE SOLVAY NEWS, Jan. 1947, at WG-ANR-00004771; *Chemical Workers Nominate New Officers*, MILWAUKEE SOLVAY NEWS, Nov. 1947; *Company and Unions Reach Agreement*, MILWAUKEE SOLVAY NEWS, Oct. 1949, at WG-ANR-00004836; *Blue Cross Offers New Hospital Plan*, MILWAUKEE SOLVAY NEWS, Oct. 1949, at WG-ANR-00004836; *How Good Is Our Pension Plan*, MILWAUKEE SOLVAY NEWS, Oct. 1953, at 2, WG-ANR-00037205).

<sup>69</sup> Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas.

<sup>70</sup> See, e.g., Ex. A-12, Excerpts of Milwaukee Gas Light Annual Reports from 1939 to 1962 (separate financial statements for Milwaukee Solvay Coke Company in each report from 1949 through 1954); see also, e.g., Ex. C-10, ALT Board of Directors Meeting Minutes, Sept. 12, 1945 (describing board's review of separate balance sheets, statements of income and statements of earned surplus for Milwaukee Solvay Coke Company).

<sup>71</sup> Ex. C-11, Milwaukee Solvay Coke Company By-Laws, Dec. 31, 1950, ANRC-00009337-44; see also, e.g., *Now Is the Time to Plan Vacations*, MILWAUKEE SOLVAY NEWS, Mar. 1949, at 2, WG-ANR-00004821 (referring to vacation policy and rules documented in earlier issue) (included in Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas).



72. Although Milwaukee Solvay Coke Company and its new parent, Milwaukee Gas Light Company, shared some of the same officers and directors, most of the officers of Milwaukee Solvay Coke were local executives who did not hold any position as an executive officer or director of Milwaukee Gas Light or ALT/American Natural Gas Company.<sup>72</sup>

73. As a Milwaukee Solvay Coke Company employee newsletter reported in February 1950, “E.F. Burdick, who served the Company as Vice President in charge of operations since 1945, was advanced to the office of Executive Vice President, and Owen J. Pritchard, General Superintendent, was named to succeed Mr. Burdick as Vice President in charge of operations.”<sup>73</sup>

74. Mr. Burdick reportedly “started with [Milwaukee Coke & Gas Company] as a Chemist 42 years” earlier, in or around 1908. “Later he was made Chief Chemist, then Foreman and General Superintendent” prior to becoming Vice President in Charge of Operations in 1945 and Executive Vice President in 1950.<sup>74</sup>

75. As further reported in the February 1950 newsletter, “Mr. Pritchard ... also started with [Milwaukee Coke & Gas] as a Chemist. He has been with the Company 32 years, during which time he served as Chemist, Chief Chemist, General Foreman, Assistant Superintendent and General Superintendent.”<sup>75</sup>

76. Mr. Burdick and Mr. Pritchard did not at any time serve as officers or directors of

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<sup>72</sup> Compare Ex. C-5, Milwaukee Coke & Gas Company/Milwaukee Solvay Coke Company Annual Reports of Officers and Directors from 1922 to 1962 with Ex. C-6, Excerpts of American Light & Traction/American Natural Gas Annual Reports from 1928 to 1962 (lists of officers and directors); see also Ex. A-22, Officers & Directors of Milwaukee Solvay Coke Company & Milwaukee Gas Light Company (1946-1957), produced by Wisconsin Gas with bates numbers WG-ANR-00005877-83.

<sup>73</sup> *Solvay Executives Advanced by Board*, MILWAUKEE SOLVAY NEWS, Feb. 1950, at 3, WG-ANR-00004842 (included in Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

ALT, American Natural Gas Company, or Milwaukee Gas Light Company.<sup>76</sup>

77. In 1950, Milwaukee Solvay Coke Company entered into a new contract to sell its coke-oven gas for a period of ten years to Milwaukee Gas Light Company for resale to the City of Milwaukee's Sewerage Commission and to provide standby capacity in case of an interruption in natural gas.<sup>77</sup>

78. Milwaukee Solvay Coke also continued to manufacture coke for sale to industrial or commercial customers unrelated to Milwaukee Gas Light.<sup>78</sup>

79. As part of a plant expansion that the U.S. government certified as "necessary in the interest of the national defense," Milwaukee Solvay Coke Company installed 20 new coke ovens at the Site in or around 1951 to help meet the increased demand for metallurgical coke and coal chemicals necessary for defense production during the Korean War and cold-war era.<sup>79</sup>

80. In 1952, the SEC reopened proceedings to determine whether Milwaukee Solvay Coke Company could remain within the American Natural Gas holding-company system.<sup>80</sup>

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<sup>76</sup> Ex. C-6, Excerpts of American Light & Traction/American Natural Gas Annual Reports from 1928 to 1962 (lists of officers and directors do not include Messrs. Burdick or Pritchard in any year); *see also* Ex. A-12, Excerpts of Milwaukee Gas Light Annual Reports from 1939 to 1962 (Messrs. Burdick and Pritchard likewise are not shown as officers or directors of Milwaukee Gas Light in any year).

<sup>77</sup> Ex. A-23, Coke Oven Gas Contract, Aug. 22, 1950, WG-ANR-00000781-98; Ex. A-24, Supplemental Opinion and Order of the Wis. Pub. Serv. Comm'n., Aug. 31, 1950, at 2, WG-ANR-00036324-25 (approving contract, as amended, as both reasonable and consistent with the public interest); *see also Plan Sale of Surplus Coke Oven Gas to Milwaukee Sewerage Commission*, MILWAUKEE SOLVAY NEWS, Mar. 1949, at 3, WG-ANR-00004822 (included in Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas).

<sup>78</sup> *See, e.g.*, Ex. A-25, Log Book Notes, WG-ANR-00046252-62 (describing shipments of coke to industrial customers on various dates); Ex. C-12, American Natural Gas Co. Board of Directors Minutes, Sept. 27, 1950, at ANRC-00004983 (reporting that Milwaukee Solvay had received orders for its entire output of coke for the first half of 1951); Ex. C-13, American Natural Gas Co. Board of Directors Minutes, Oct. 25, 1950, at ANRC-00004987-88 (reporting "very satisfactory" earnings of Milwaukee Solvay based on further commitments for purchase of the entire output of coke).

<sup>79</sup> *See Defense Minerals: Hearings Before the Comm. on Interior & Insular Affairs*, 82d Cong. 134 (1951), [https://www.google.com/books/edition/Defense\\_Minerals/EPpEAQAAMAAJ?hl=en&gbpv=1&dq=oclc10578809&pg=PA134&printsec=frontcover](https://www.google.com/books/edition/Defense_Minerals/EPpEAQAAMAAJ?hl=en&gbpv=1&dq=oclc10578809&pg=PA134&printsec=frontcover); *see also* U.S. Presidential Proclamation No. 2914, 15 Fed. Reg. 9029 (Dec. 16, 1950) (declaring national emergency).

<sup>80</sup> American Natural Gas 1953 Annual Report, at 9 (included in Ex. C-6, Excerpts of American Light &

81. The SEC's Division of Corporate Regulation took the position that Milwaukee Solvay Coke Company should be divested because "Solvay is a substantial industrial enterprise the major portion of whose business consists of the production and marketing of coke and coal chemicals having no operating relationship to Milwaukee [Gas Light]'s utility business[.]"<sup>81</sup>

82. Noting the contractual relationship between Milwaukee Solvay and Milwaukee Gas Light and the benefits to both parties, the SEC declined to modify the previous order allowing Milwaukee Solvay Coke to remain within the system at that time.<sup>82</sup>

83. In its Findings and Opinion dated January 22, 1954, the SEC also noted, incidentally, that American Natural Gas Company was "solely a holding company" and thus not an operating company itself.<sup>83</sup>

#### **H. Dividend Transfer of Milwaukee Solvay Stock to American Natural Gas**

84. In October 1954, the Chairman of American Natural Gas reported that "it was deemed desirable for [American Natural Gas] to acquire from Milwaukee Gas Light Company the latter's investment in the common stock of Milwaukee Solvay Coke Company, so that the Coke Company would become a direct instead of an indirect subsidiary of [American Natural Gas] Company." The Chairman explained that "it was believed the Wisconsin Public Service Commission would prefer such direct ownership to exist" by the holding company rather than Milwaukee Gas Light.<sup>84</sup>

85. With the approval of both the Wisconsin Public Service Commission and the SEC, Milwaukee Gas Light transferred of all the common stock of Milwaukee Solvay Coke back

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Traction/American Natural Gas Annual Reports from 1928 to 1962).

<sup>81</sup> *In re United Light & Rys. Co.*, 35 S.E.C. 516, 519, 1954 SEC LEXIS 616, at \*7 (Jan. 22, 1954).

<sup>82</sup> *Id.* at 519-20, 526, 1954 SEC LEXIS 616, at \*9-10, \*23-24.

<sup>83</sup> *Id.* at 517, 1954 SEC LEXIS 616, at \*3.

<sup>84</sup> Ex. C-9, American Natural Gas Board of Directors Minutes, Oct. 27, 1954, at ANRC-00005276.

to American Natural Gas through a series of dividends paid in stock of Milwaukee Solvay Coke Company, resulting “in the disposal by Milwaukee Gas Light of its entire interest in [Milwaukee Solvay Coke Company].”<sup>85</sup>

86. By paying dividends in stock rather than cash, Milwaukee Gas Light was able “to retain cash equal to its investment in the stock of Solvay” and thereby “conserve cash to finance its construction program.”<sup>86</sup>

87. Milwaukee Gas Light Company completed the transfer of Milwaukee Solvay Coke Company’s stock to American Natural Gas in March 1956, returning Milwaukee Solvay Coke to its status as a first-tier subsidiary of American Natural Gas.<sup>87</sup>

#### **I. Continued Operations and Declining Sales of Milwaukee Solvay Coke Company**

88. As indicated in a manuscript article prepared in or around 1958, Milwaukee Solvay Coke Company was operating around the clock and had 514 active employees, 103 of whom had been with the company for at least 25 years.<sup>88</sup>

89. Nevertheless, each year from 1956 through 1958, Milwaukee Solvay Coke Company experienced a decrease in earnings resulting from declining coke sales.<sup>89</sup>

90. In 1959, American Natural Gas commissioned a study by an independent

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<sup>85</sup> Milwaukee Gas Light 1955 Annual Report, at 10, WG-ANR-00048359 (included in Ex. A-12, Excerpts of Milwaukee Gas Light Annual Reports from 1939 to 1962); *Am. Natural Gas Co.*, S.E.C. Release No. 35-12746, 1954 WL 5317 (Dec. 16, 1954); *In re App. of Milwaukee Gas Light Co.*, No. 2-U-4346, 39 Wis. Pub. Serv. Comm’n Rep. 570, 572-73 (Dec. 21, 1954), at [https://www.google.com/books/edition/\\_/Hy5SAAAAMAAJ?hl=en&gbpv=1](https://www.google.com/books/edition/_/Hy5SAAAAMAAJ?hl=en&gbpv=1).

<sup>86</sup> See *Am. Natural Gas Co.*, S.E.C. Release No. 35-12746, 1954 WL 5317, at \*1 (Dec. 16, 1954); Milwaukee Gas Light 1955 Annual Report, at 5, WG-ANR-00048354 (included in Ex. A-12, Excerpts of Milwaukee Gas Light Annual Reports from 1939 to 1962).

<sup>87</sup> See Milwaukee Gas Light 1955 Annual Report at 10, WG-ANR-00048359 (included in Ex. A-12, Excerpts of Milwaukee Gas Light Annual Reports from 1939 to 1962).

<sup>88</sup> Ex. A-26, Manuscript from Henry T. Garvey of Milwaukee Gas Light to Fred H. McIntire, *Milwaukee Solvay Coke Company*, dated July 1957, at WG-ANR-00011385.

<sup>89</sup> See Ex. C-6, Excerpts of American Light & Traction/American Natural Gas Annual Reports from 1928 to 1962 (1956 Annual Report, at 13; 1957 Annual Report, at 13; and 1958 Annual Report, at 12).

consultant to evaluate “(a) if the [Milwaukee Solvay] Coke Company is being operated most effectively and (b) the most desirable arrangements for the future between the [Milwaukee Solvay] Coke Company and [Milwaukee Gas Light], both until the termination of the Coke Oven Gas Contract in 1960, and thereafter.”<sup>90</sup>

91. The ensuing Report on the Operations of Milwaukee Solvay Coke Company, by Chas. R. Hetherington & Co. Ltd. (the “Hetherington Report”), observed that Milwaukee Solvay Coke’s “supervisory personnel at the plant are capable and experienced men doing a creditable job.”<sup>91</sup>

92. The Hetherington Report also stated that Milwaukee Solvay Coke Company’s “operating management is giving careful attention to [the] equipment but is limiting repairs to a necessary minimum.” In that regard, the report noted that “if operation is to be continued for more than a few years an additional expenditure in excess of the amount planned to be spent for maintenance must be made. An additional ... \$250,000 annually is estimated to be required....”<sup>92</sup>

93. The Hetherington Report further indicated, however, that the coke plant could realize cost savings, estimated at up to \$183,000 each year, by using as much of its coke-oven gas as possible for its own operations, instead of continuing to purchase natural gas or solid fuels, to fire the coke ovens at the plant.<sup>93</sup>

94. The cost to Milwaukee Solvay Coke Company of maintaining standby service for

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<sup>90</sup> Ex. A-27, Letter from Chas. R. Hetherington & Co. Ltd. to American Natural Gas Co., July 10, 1959, at 1 (WG-ANR-00006870) and attached Report on the Operations of Milwaukee Solvay Coke Company, June 1, 1959, at 2 (WG-ANR-00006881).

<sup>91</sup> *Id.* at 22, WG-ANR-00006901.

<sup>92</sup> *Id.* at 33, WG-ANR-00006912.

<sup>93</sup> *Id.* at 29, WG-ANR-00006908.

Milwaukee Gas Light under the Coke Oven Gas Contract amounted to an additional expense of \$32,000 that otherwise could be avoided each year, the Hetherington Report noted.<sup>94</sup>

95. Regardless, the Hetherington Report suggested that “the loss in revenue to the Coke Company” of continuing to sell coke-oven gas to Milwaukee Gas Light for the remaining 18-month term of the Coke Oven Gas Contract “represents a gain in revenue to the Gas Company,” so that “there is no net effect upon the American Natural System ....”<sup>95</sup>

96. Further, because there was a net benefit to Milwaukee Solvay Coke Company from the annual standby fee it received from Milwaukee Gas Light, the Hetherington Report concluded that “the [Milwaukee Solvay] Coke Company and the American Natural system will benefit during the next 18 months by keeping the Coke Oven Gas Contract in effect, until it expires.”<sup>96</sup>

97. Milwaukee Gas Light Company and Milwaukee Solvay Coke Company nevertheless mutually agreed in 1959—before the end of the contract’s term—to relieve Milwaukee Solvay Coke of any further obligation to sell gas to Milwaukee Gas Light for resale to the Sewerage Commission.<sup>97</sup>

98. In the early 1960s, Milwaukee Solvay Coke Company made various plant improvements including the replacement of 120 feet of fuel-gas main, the reconditioning of a tank used to “quench” coke with water upon its removal from the ovens, and improvements to bins and

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<sup>94</sup> *Id.* at 18, WG-ANR-00006897.

<sup>95</sup> *Id.* at 36, WG-ANR-00006916.

<sup>96</sup> *Id.*

<sup>97</sup> Ex. C-14, Letter from Carl Claussen to J. Russell Forgan, July 8, 1960, at 1 (ANRC-00008528) (“In 1959, by mutual consent of the Milwaukee companies, the contract under which Milwaukee Gas purchased Milwaukee Coke Company’s coke oven gas was terminated....”); *id.* at 3 (ANRC-00008530) (describing operational changes by Milwaukee Solvay Coke in 1959 that were “made possible through cancellation of the contract with Milwaukee Gas Light Company under which the latter purchased the Coke Company’s coke oven gas for resale to the Sewerage Commission of Milwaukee”).

screens used to sort coke.<sup>98</sup>

99. Because Milwaukee Solvay Coke Company no longer sold any gas to Milwaukee Gas Light Company and the standby arrangement between them terminated in 1959, American Natural Gas considered it “very possible that if the [SEC] reopened this matter, it would no longer find the operations of the Coke Company to be economically necessary to the utility business of Milwaukee Gas Light Company, in which case a divestment would presumably be required under ... Section 11” of the Public Utilities Holding Company Act.<sup>99</sup>

100. American Natural Gas Company therefore evaluated the possibility of selling Milwaukee Solvay Coke Company, concluding that “[i]f a prospective buyer is willing to purchase the stock of Solvay, this would be the simplest transaction. If the buyer will buy only assets, then a resolution to liquidate should be adopted and the sale and liquidation completed within one year.”<sup>100</sup>

## **J. Milwaukee Solvay Coke’s Asset Sale and Legal Dissolution**

101. By agreement dated June 1, 1962, Milwaukee Solvay Coke Company sold its business and substantially all of its assets, including the Site, to Wisconsin Coke Company, Inc. (“Wisconsin Coke”), a newly formed subsidiary of Pickands Mather & Co.<sup>101</sup>

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<sup>98</sup> Ex. A-15, Excerpts of various Milwaukee Solvay Coke Co. employee newsletters produced by Wisconsin Gas (*Fuel Gas Main Replaced*, MILWAUKEE SOLVAY NEWS, Mar.-Apr. 1960, at 4, WG-ANR-00004918; *Construction Work*, MILWAUKEE SOLVAY NEWS, July-Aug. 1960, at 3, WG-ANR-00004920).

<sup>99</sup> Ex. C-15, American Natural Gas Service Co. Interoffice Memorandum Re Milwaukee Solvay Coke Company—Application of Public Utility Holding Company Act to Proposed Disposition of American Natural’s Interest, July 12, 1961, at 2 (ANRC-00008515).

<sup>100</sup> Ex. C-16, American Natural Gas Service Co. Interoffice Memorandum Re Possible Sale of Milwaukee Solvay Coke Company, Aug. 18, 1960, at ANRC-00008522; *see also* Ex. C-14, Letter from Carl Claussen to J. Russell Forgan, July 8, 1960, at ANRC-00008528-29 (“Because of the possibility that the [SEC] might sometime in the future rule that American Natural should dispose of the Coke Company, ... American Natural is giving consideration to the desirability of selling the Coke Company.”).

<sup>101</sup> Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, Oct. 29, 2004, at WG-ANR-00046080; Ex. C-17, Purchase Agreement between Wisconsin Coke Company, Inc. and Milwaukee Solvay Coke Company, June 1, 1962; *see also* Ex. C-18, Letter from MSC Corporation to Wisconsin Industrial Comm’n, Sept. 7, 1962.



102. Wisconsin Coke agreed to buy all of Milwaukee Solvay Coke Company's assets, excluding cash, stocks, bonds and other securities, prepaid expenses, claims for tax refunds and claims for utility rebates for services incurred before June 1, 1962.<sup>102</sup>

103. Following the June 1, 1962 consummation of the sale, Wisconsin Coke promptly filed the necessary documents with the Wisconsin Secretary of State to change its name to Milwaukee Solvay Coke Company, Inc. and continued operations at the Site without interruption.<sup>103</sup>

104. The former Milwaukee Solvay Coke Company changed its name to MSC Corporation ("MSC") and ceased to have any employees or operations after June 1, 1962.<sup>104</sup>

105. On June 20, 1962, the chairman of American Natural Gas reported that, in light of the sale, MSC "should be liquidated and dissolved as soon as the necessary legal steps can be taken."<sup>105</sup>

106. By resolution that same day, the directors of American Natural Gas authorized the company's officers to take all necessary steps toward liquidation of MSC Corporation and "to agree to the assumption by the Company of any outstanding liabilities of MSC Corporation not otherwise provided for[.]"<sup>106</sup>

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<sup>102</sup> See Ex. C-17, Purchase Agreement between Wisconsin Coke Company, Inc. and Milwaukee Solvay Coke Company, June 1, 1962, at 1-2.

<sup>103</sup> Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, Oct. 29, 2004, at WG-ANR-00046080; Ex. A-28, Certificate of Amendment of Articles of Incorporation of Wisconsin Coke, filed June 19, 1962; Ex. A-29, The Milwaukee Solvay Coke Company, Inc. 1962 Annual Report at 1, WG-ANR-00007146; Ex. C-19, Letter from Milwaukee Solvay Coke Company to Milwaukee Water Works, May 24, 1962.

<sup>104</sup> Ex. A-1, Response of Wisconsin Electric Power Company and Wisconsin Gas to U.S. EPA Information Request, Oct. 29, 2004, at WG-ANR-00046080; Ex. C-20, Milwaukee Solvay Coke Company, Minutes of Special Meeting of Board of Directors, June 1, 1962; Ex. C-21, Letter from MSC Corporation to Henry J. Gmeinder, Wisconsin Industrial Commissioner, June 18, 1962.

<sup>105</sup> See Ex. C-22, American Natural Gas, Minutes of Regular Meeting of Board of Directors, June 20, 1962, at ANRC-00005913.

<sup>106</sup> *Id.*

107. In September 1962, the directors of American Natural Gas again met and authorized the President or any Vice President of American Natural Gas to execute written consents that may be required of the sole shareholder of MSC under the Wisconsin Business Corporations Law (Wis. Stat., Title XVII, ch. 180) to authorize “the complete liquidation, dissolution and termination of the corporate existence of MSC.”<sup>107</sup>

108. On November 2, 1962, the SEC issued an order approving the planned liquidation of MSC. The SEC order recited that:

MSC, whose assets consist substantially of cash and cash items, ... proposes to reacquire all of its outstanding stock ... in exchange for its assets and then dissolve. American Natural, as sole stockholder of MSC, proposes to surrender the common stock in exchange for MSC’s assets subject to its liabilities as of the date of dissolution.<sup>108</sup>

109. MSC filed a statement of intent to dissolve with the Wisconsin Secretary of State on November 27, 1962.<sup>109</sup>

110. A copy of the statement of intent, as certified by the Wisconsin Secretary of State, was duly recorded in the office of the Milwaukee County Register of Deeds on December 3, 1962.<sup>110</sup>

111. On December 27, 1962, the officers of MSC executed Articles of Dissolution that were filed with, and accepted by, the Wisconsin Secretary of State the following day.<sup>111</sup>

112. A certified copy of MSC’s Articles of Dissolution was duly recorded in the

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<sup>107</sup> Ex. C-23, American Natural Gas, Minutes of Regular Meeting of Board of Directors, Sept. 19, 1962, at ANRC-00005933.

<sup>108</sup> *In re Am. Natural Gas Co.*, Public Utility Holding Company Act Release No. 14737, 1962 SEC LEXIS 1073, at \*2-3 (Nov. 2, 1962).

<sup>109</sup> Ex. C-24, Statement of Intent to Dissolve, certified as filed with the Wisconsin Secretary of State, Nov. 27, 1962 (ANRC-00007650-52).

<sup>110</sup> *Id.*; *see also* Ex. C-25, Statement of Intent to Dissolve, certified as received and accepted by the Milwaukee County Register of Deeds, Dec. 3, 1962 (ANRC-00001931-34).

<sup>111</sup> Ex. C-26, Articles of Dissolution, Dec. 27, 1962 (ANRC-00007654).

Milwaukee County Register of Deeds office on December 31, 1962.<sup>112</sup>

113. As stated in MSC's Articles of Dissolution, "[a]ll debts, obligations and liabilities of [MSC] have been paid and discharged" and "[a]dequate provision has been made for all debts, obligations and liabilities, contingent in nature, of which the corporation has actual knowledge."<sup>113</sup>

114. On the same day MSC's officers signed the Articles of Dissolution, MSC and American Natural Gas executed an instrument titled Transfer of Assets in Liquidation, providing for the complete liquidation of MSC's remaining assets to its sole shareholder, American Natural Gas.<sup>114</sup>

115. The Transfer of Assets in Liquidation recited that "all debts, obligations and liabilities of MSC of which MSC has knowledge have been paid and discharged" and provided for American Natural Gas "to pay on behalf of MSC any and all debts, obligations, and liabilities of MSC which may hereafter be established, including, but not in limitation of the generality of the foregoing, any liabilities which may be established under the Wisconsin Workmen's Compensation Act[.]"<sup>115</sup>

116. The Transfer of Assets in Liquidation further provided that "the aggregate amount of debts, obligation and liabilities assumed by American Natural ... shall not exceed the value of the assets transferred" in liquidation of MSC.<sup>116</sup>

117. MSC's assets at the time of liquidation consisted of cash, including the

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Ex. C-27, Transfer of Assets in Liquidation between MSC Corporation and American Natural Gas Company, Dec. 27, 1962.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

proceeds from its sale of all of Milwaukee Solvay Coke Company's operating assets and business to Wisconsin Coke, as well as other cash items and accounts receivable.<sup>117</sup>

118. In a close-out letter to the SEC dated December 31, 1962, American Natural Gas and its subsidiaries, including MSC and Milwaukee Gas Light, reported that

MSC ... has paid all of its known debts, obligations and liabilities and transferred all of its assets, consisting of cash and accounts receivable ... to American Natural Gas ... as a distribution in complete liquidation of MSC.... MSC has been dissolved. American Natural has added the proceeds received upon the liquidation of MSC to the treasury funds of American Natural, and American Natural's investment in MSC has been closed out.<sup>118</sup>

119. The two-year window under Wisconsin law in which the dissolved MSC and its shareholders may be sued for the company's debts, obligations, and liabilities closed in 1964.<sup>119</sup>

120. CERCLA was enacted in 1980, some 18 years after the dissolution of MSC.<sup>120</sup>

Dated: July 20, 2022

Respectfully submitted,

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ATTORNEYS FOR AMERICAN NATURAL  
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<sup>117</sup> Ex. A-30, Letter to the SEC, *In re Am. Natural Gas Co.*, File No. 70-4064, Dec. 31, 1962 (WG-ANR-00031282).

<sup>118</sup> *Id.*

<sup>119</sup> See Wis. Stat. § 180.787 (1961) (renumbered, as amended, as Wis. Stat. § 180.1407, effective Jan. 1, 1991). A copy of the Wisconsin Business Corporations Law, Wis. Stat., Title XVII, ch. 180, as it existed at the time of MSC's dissolution is included as Exhibit D hereto.

<sup>120</sup> See Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510 (showing CERCLA's enactment in 1980).